



ERGO

Analysing developments impacting business

ONE-TIME 'ACTIVE' FILING - CRACKDOWN ON SHELF COMPANIES CONTINUES...

22 February 2019

On 21 February 2019, the Ministry of Corporate Affairs (MCA) notified changes to the Companies (Incorporation) Rules, 2014 introducing a one-time form filing requirement confirming the active status of companies. The form needs to be filed on or before 25 April 2019.

The amendment has not yet been notified in the official gazette of India, but is expected to come into force on 25 February 2019.

Key Highlights

- **Applicability and Deadline:** Every company incorporated on or before 31 December 2017 is required to file e-form ACTIVE (Active Company Tagging Identities and Verification) on or before 25 April 2019. Companies that have not filed due financial statements or annual return are restricted from making the filing (unless under management dispute which has been registered by the Registrar of Companies (ROC)).

A closer review of the e-form ACTIVE reveals that numerous details such as (i) number and list of directors, (ii) information about statutory auditors and cost auditors, where applicable, (iii) details of chief executive officer, company secretary and chief financial officer, (iv) details of annual financials and annual return filed for FY 2017-18, (v) photograph of registered office showing external building and inside office, along with one director / key managerial personnel who has digitally signed the e-form ACTIVE are required to be provided. Further, practicing professional's certification also appears to be mandatory on e-form ACTIVE.

- **Exemptions:** The filing requirement does not apply to companies which (i) have been or are in the process of being struck off; (ii) are under liquidation; or (c) are amalgamated or dissolved, as recorded on the rolls of the ROC.
- **Consequences of non-filing:** Non-compliance with the filing requirements within the filing deadline will have the following consequences: (i) it will lead to the company being marked as ACTIVE non-compliant; (ii) the ROC may initiate action for the removal of such company from its rolls; (iii) the ROC will not accept certain form filings (such as, SH-7 for alteration of authorised capital, PAS-3 for return of allotment, DIR-12 for change in directors, INC-22 for change in registered office and

INC-28 for amalgamation and de-merger); and (iv) a delayed filing fee of INR 10,000 shall be payable for filings after 25 April 2019.

Comments

The details required to be provided in e-form ACTIVE are comprehensive and companies which are non-operating, or which are not fully compliant with the requirements of the Companies Act, 2013, will find it difficult to furnish the details required in e-form ACTIVE. Further, the consequences of being 'ACTIVE non-compliant' are severe. The extent of ROC's oversight in view of the information shared in e-form ACTIVE remains to be seen.

As an immediate next step, all companies incorporated on or before 31 December 2017 should (i) complete their pending compliances (including filing of their financial statements and / or annual returns for FY 2017-18) at the earliest; and (ii) file e-form ACTIVE on or before 25 April 2019.

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